are of the opinion, however, that the provision of the Income Tax Law, requiring the withholding of the tax at its source, is a mere provision, intended only to facilitate the more convenient and certain collection of the tax upon income; that the tax in question is not levied upon the bonds, nor primarily upon the interest accumulating thereon. The thing taxed is the income of the holder of the bond, and it may, or may not, be true that the income from a particular bond will be subject to the tax. The condition governing the taxability of the accumulated interest represented by any particular coupon depends not upon the recitals in the bond contract, but upon the amount of income of the particular holder. And the provision of the law for the collection of this tax at its source, rather than from the income taxpayer after the receipt of his dividend, will not change the contractual rights of the parties.

We are cited to no case where the exact question here involved has been decided; but the view we have expressed comports with the construction of such contracts expressed in Black on Income Taxes (2d ed., 1915, sec. 360). That learned writer there says:

'Sec. 360. Bonds of many corporations are issued under a contract by which they are made "tax free," that is, a contract by which the obligor undertakes to pay all taxes which may be assessed on the bonds. But apparently such a covenant does not bind the obligor to pay the income tax on the interest, unless it includes the income tax by name. Under a similar statute enacted by Congress at an earlier day, it was held that a provision in a corporation mortgage, requiring the company to pay the debt and interest "without any deduction, defalcation, or abatement to be made of anything for or in respect of any taxes, charges, or assessments whatsoever," relates to taxes on the property mortgaged or on the mortgage debt, and does not refer to the periodical interest payments regarded as income of the bondholder, and hence does not require the company to pay the interest clear of the income tax (levied in 1864), which tax companies were "authorized to deduct and withhold from all payments on account of any interest or coupons due and payable." On the contrary, it was held the company complies with its contract when it pays the interest, less the tax, and retains the tax for the government.'

In support of this text he cites Haight *v.* Railroad (6 Wall. 15, 18 L. Ed. 818); Baltimore *v.* Baltimore R. (10 Wall 543, 19 L. Ed. 1043)."

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**Evidence—Demonstration of Objectionable Noise—Reproduction on Phonograph.**—In Boyne City, etc., R. Co. *v.* Anderson (146 Mich. 328) it was held that "in proceedings to condemn land for a railroad right of way, the landowner is properly allowed to exhibit to the jury, by means of a phonograph, a reproduction of the noises made

by the petitioner's trains in conducting their operations in the vicinity of respondent's premises, a proper foundation having been laid for the admission of such evidence.

The discussion on this particular point is not very extensive and even as far as it goes, is qualified by the remark that even if it had been error to permit the use of the machine "its mild reproduction of sounds could not have so seriously prejudiced the petitioner as to require a reversal of the case upon that ground." About all that it said by way of argument upon the competency of the evidence is the following:

"Communications conducted through the medium of the telephone are held to be admissible, at least in cases where there is testimony that the voice was recognized (27 Am. & Eng. Enc. Law, 2d ed., p. 1091, and cases cited; 1 Wigmore on Evidence, § 669; 3 Wigmore on Evidence, § 2155). The ground for receiving the testimony of the phonograph would seem to be stronger, since in its case there is not only proof by the human witness of the making of the sounds to be reproduced, but a reproduction by the mechanical witness of the sounds themselves."

In our judgment the above quoted qualification was unnecessary; the evidence was properly admitted, and such reasoning as is offered in support of the ruling is sufficient. Our attention was called to this decision by an editorial upon it in Bench and Bar for May, 1917, under the same title as the present article. We do not remember noticing any other case passing upon the admissibility in evidence of a phonographic reproduction of human utterances or other sounds, the proof of which was material to issues on trial. The fact that Bench and Bar features the case leads to supposition that judicial utterances on this subject have at least not been frequent. The present case is therefore worthy of notice, though, in common with the view of the Michigan court, we believe that little is required to be said in favor of the general admissibility of such evidence.

In earlier days of scientific discovery strenuous arguments were made against the evidentiary use of new mechanisms or processes without direct statutory authority. The new inventions have, however, been successively utilized for juridical purposes, the telegraph, the telephone, the X-ray photograph, and now the phonograph being accepted as providing legitimate probative methods. Each new invention naturally has called forth a train of decisions pronouncing upon the proper methods and limitations of its employment. The telegraph, for instance, developed fresh and interesting problems in the law of agency and, incidentally, of the law of evidence. The telephone led to similar determinations, as, for example, when a telephone message may be received as against a party without absolute recognition by the witness of the voice of a speaker at the other end of the line. Probably in time there will be decisions de-

claring and limiting particular phases of the use of the phonograph. Bench and Bar, referring to the weight of the evidence received in the Michigan court, observes that "we doubt the adequacy of the comparatively faint voice of a phonograph to reproduce the full effect of a railroad train steaming along a street." There is, of course, point to this remark. It would seem, however, that the evidence was competent for what it was worth, and the question of adequacy or inadequacy of representation was one for argument and perhaps for additional testimony.

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**Husband and Wife—Actions Between on Tort or Contract.**—In Heyman *v.* Heyman, in the Court of Appeals of Georgia (April, 1917, 92 S. E. 25), the actual decision, according to the syllabus by the court, was that "under the statute law of Georgia a wife cannot recover of a husband, with whom she is living in lawful wedlock, for a tort resulting from his negligent operation of an automobile in which they were riding at the time of the injury." The decision is of interest because after an examination and comparison of Married Women's Enabling Acts and decisions of the courts of various states interpreting them, the general proposition is laid down that a wife has no right to sue for husband for a tort committed by him. This question has been passed upon by the courts of many states, and we cannot say what the numerical preponderance of authority is one way or the other. The Supreme Court of Errors of Connecticut in Brown *v.* Brown (89 Atl. 889), holds that under the Married Women's Act of that state a wife might maintain an action for false imprisonment and assault against her husband. The Supreme Court of the United States in Thompson *v.* Thompson (218 U. S. 611), Justices Harlan, Holmes and Hughes dissenting, had chosen the ultra-conservative view holding that such an action would not lie.

The Michigan Law Review for May, 1917, contains the following editorial note:

"**Husband and Wife—Contract for Services Rendered Husband.**—The husband had hired the plaintiff, his wife, to assist him in his work as a detective, agreeing to pay her what her services were reasonably worth. The statute provided that a married woman might contract with reference to her property in the same manner and to the same extent as a married man and that she should be entitled to her earnings. She sued to recover from husband's estate the value of her services to him. Held that a married woman under an express contract with her husband may recover for extra or unusual services rendered him (In re Cormick's Estate, Neb., 1916, 160 N. W. 989).

The authorities are inconsiderable conflict upon the point raised in the instant case. Under most married women's statutes the wife is entitled to her earnings in her separate business or when she is